

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5345 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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LILABEN W/O PRATAPJI THAKORE

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT for Petitioner  
MR CC BHALJA, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/99

#### ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the prayer of the petitioner is to quash the detention order dated 23.6.1998 passed by the Commissioner of Police, Ahmedabad under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA'). The Detaining Authority on the strength of six registered cases against the petitioner under Bombay

Prohibition Act and further on the basis of the statements of the two confidential witnesses reached subjective satisfaction that the activities of the petitioner as bootlegger within the meaning of section 2(b) of the PASA were prejudicial for maintenance of public order. Consequently, the impugned detention order was passed. This order is under challenge in this writ petition only on the ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

From the six registered cases and statements of the two confidential witnesses it can easily be inferred that the petitioner is bootlegger, engaged in the business of countrymade liquor. However, a bootlegger cannot be preventively detained unless his activities are prejudicial for maintenance of public order.

For seeing whether the activities of the petitioner were prejudicial for maintenance of public order or not the material on record before the Detaining Authority was six registered cases under the Bombay Prohibition Act and the statements of two confidential witnesses. The learned Assistant Government Pleader has drawn my attention to para 5 of the counter affidavit of the Detaining Authority in which he has deposed that the activities of the detenu had disturbed the public order but even in this para, it is not clarified which of the criminal activities of the petitioner disturbed the public order.

So far as the six registered cases under the Bombay Prohibition Act are concerned, there is no disclosure in the grounds of detention that when search and seizure was made from the petitioner on those six occasions he created any obstruction or created any situation prejudicial for maintenance of public order. As such these six registered cases which were purely cases affecting law and order were effectively dealt with by booking the petitioner under relevant sections of the Bombay Prohibition Act and as such these cases could not be considered for reaching subjective satisfaction that the activities were prejudicial for maintenance of public order.

Then remains the statements of the two confidential witnesses. One witness stated about the incident dated 2.6.1998. The incident took place at 6.30 p.m. The petitioner abused the witness near the corner of Lilanagar graveyard on the suspicion that the witness was police informer. The witness was beaten. People in

the surrounding area gathered. They were also threatened. Knife was shown to them. Persons who collected at the spot started running. Atmosphere of terror was created. Day to day life of the people was affected. It is really difficult to appreciate and understand that for this minor incident day to day life of the people was affected. Unless it was stated by the witness that the activities of the petitioner dated 2.6.1998 continued for a couple of days it could not be inferred that day to day life of the people was affected. Moreover, it was incident between two individuals and that too on mere suspicion. Even tempo of the life of the locality was not disturbed by the so called activity of the petitioner. The petitioner and her accomplice did not inflict any knife injury either to the witness or to the persons who collected at the spot.

The second incident is dated 4.6.1998 at 8.00 a.m. Here the petitioner asked the witness to keep certain quantity of liquor in his house. The witness refused to oblige the petitioner, whereupon he was beaten. Story further proceeds that persons of the vicinity gathered and they were also threatened by the petitioner. People started running and atmosphere of terror was spreaded.

Careful consideration of these two incidents will give inference that, if at all, such incidents took place they were incidents relating to law and order and not relating to the disturbance of public order. Neither even tempo of the life of the locality or community was disturbed nor public in general in that particular area was disturbed. As such there was no sufficient material before the Detaining Authority to arrive at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The preventive detention of bootlegger whose activities were not prejudicial for maintenance of public order under these circumstances cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 23.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt